IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.10663 of 2001

Between:

Hyderabad Chemical Products Limited, 60 & 61, IDA,
PASHAMLARAM, Sangareddy, Medak District, rep., by its
Managing Director.

..... PETITIONER

AND

1. The Commissioner for Workmen Compensation
and Assistant Comissioner of Labour, Patancheru,
Medak District.

2. Kathari Namdev Rao,
H.No.16-03, Janathanagar, Moosapeta,
Ranga Reddy District.

3. Kathari Teja Bai,
W/o Namdev Rao, H.No.16-03, Janathanagar,
Moosapeta, Ranga Reddy District.

4. Kathari Ranjani, D/O Namdev Rao,
H.No.16-03, Janathanagar,
Moosapet, Ranga Reddy District.

5. Kathari Dilip Kumar, S/O Namdev Rao,
H.No.16-03, Janathanagar, Moosapet, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction or writ particularly one in the nature of Writ of Mandamus declaring that the order of the first respondent in I.A.No.2 of 2000 in W.C.No. 3 of 1998 dated 04.05.2000 is illegal and contrary to law and further declare that the petitioner is entitled to seek amendment to the counter in W.C.No.3 of 1998.

Counsel for the Petitioner:MR.B.VIJAYSEN REDDY

Counsel for the Respondent : Mr.T.V.S.Kumar (not present)

The Court made the following :

ORDER:

Challenging the order, dated 04.05.2000, passed in I.A.No.2 of 2000 in W.C.No.3 of 1998 on the file of the Commissioner for workmen's compensation and Assistant Commissioner of Labour, Patancheru, Medak District, the present writ petition is filed.

The petitioner herein is the opposite party in W.C.No.3 of 1998. He filed I.A.No. 2 of 2000 in the said W.C., seeking to amend the counter. The said petition was dismissed on the ground that the amendment was not necessary for the purpose of determining the real question in controversy between the parties.

The learned counsel for the petitioner contended that the petitioner has been paying the Employees State Insurance contributions in respect of the deceased casual employee. As such, the deceased does not come under the purview of Workmen's Compensation Act. He further contended that the petition filed by the petitioner to amend the counter was dismissed on the sole ground that the amendment sought for was not necessary and therefore, such an observation is perverse. Hence, he prays to allow the writ petition by setting aside the order under challenge.

None appeared for the respondents on 06.06.2005 and therefore, the matter is posted today. Today also, none appeared for the respondents.

The only ground on which the trial Court dismissed the petition filed by the petitioner for amendment of counter is that it was not necessary for the purpose of determining the real question in controversy between the parties. The main application is filed for compensation consequent to the death of one Kotari Santosh Kumar and subsequently, the petitioner has filed the present application seeking to amend the counter, which reads as under :

> 13(a) "It is submitted that the opposite party is a factory covered under the provisions of ESI Act. The deceased Sri.K.Santosh Kumar is an employee within the meaning of the Section 2(9) of the ESI Act. The opposite party has been paying the ESI contributions in respect of this casual employee. He does not come under the purview of workmen's compensation Act. On this account also the above application filed is not maintainable in view of the ban imposed under Section 53 of the Act"

Basing on the amendment, the issue that will be arisen is as to whether the deceased workman died during the course of his employment or not and whether, the W.C., filed by the respondents is maintainable or not in view of the ban imposed under Section 53 of the Act. If this issue is framed at the time of deciding the claim petition, this will resolve the controversy between the parties. Unless there is a pleading, any amount of evidence to be adduced at the time of trial before the Court, is of no value and perhaps, that might be the reason under which the petitioner herein sought for amendment of the counter. If the petitioner is allowed to amend the counter, no prejudice would be caused to the other side, because they are always at liberty to adduce rebuttal evidence. Therefore, the reasoning assigned by the tribunal in dismissing the application filed by the petitioner, is not sustainable and as such, the order impugned is liable to be set aside.

In the result, the writ petition is allowed setting aside the order passed by the Commissioner for Workmen's compensation in I.A.NO.2 of 2000 in W.C.No. 3 of 1998 and consequently the said I.A., is allowed permitting the petitioner to amend

the pleadings in the counter. No costs.

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08.06.2005

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To

1. The Commissioner for Workmen Compensation
and Assistant Comissioner of Labour, Patancheru,
Medak District.

2 Two CD copies.